

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

Crl.L.P..No. 127 of 2007()

CC.19/1998 of MUNSIFF-MAGISTRATE COURT, PARAVOOR
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PETITIONER/COMPLAINANT:

1. SREENIKETAN CENTRE FOR SOCIAL
DEVELOPMENT CHATHANOR REPRESENTED BY
ITS DIRECTOR,DR.N.RAVEENDRAN.
2. DR.N.RAVEENDRAN,RESIDING AT SREERAGAM
THAZHAM, CHATHANOR.

BY ADVS. SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR

RESPONDENTS: ACCUSED AND STATE

1. SRI.D.RAJU,ASWATHYMANA.
THAZHAM,
CHATHANOR.
2. SRI.G.SUDARSANAN PILLAI,
POYKAVILA VEEDU,KARAMCODE P.O.,
KOLLAM.
3. SRI.DINESH MONI.G.,
ARCHANA,KOTTAPPURAM,PARAVOOR P.O.,
4. SRI.V.PAVITHRAN,PUTHENVILA VEEDU,
VENKALAM, EDAVA P.O.VARKALA.
5. SRI.S.RAJAN,RAJKAMAL, NEAR PARAVOOR
POLICE STATION,PARAVOOR P.O.KOLLAM.
6. SRI.R.ASOKAN,PUTHENVEEDU,PARIPPALLY P.O.
KOLLAM.
7. M.MOHAMMAD HANEEFA,VILAYIL VEEDU,
VARINJAM WARD KARAMCODE P.O.,
CHATHANNOOR.

8. SRI.MANOCHARAN.M.,PARAPPURAM,
MAMPALLIKUNNAM,
CHATHANOOR P.O.,

9. ER. ABHIMANYU,S/O.ARJUNAN,
SAUHRITHALAYAM,NEDUMPANA,
P.O. KOLLAM.

10. SRI.S.RAJENDRAN,(DIED),
ANUPARMA,THAZAM CHATHANNOOR P.O.,

11. ASEENA.S.,
A..R.HOUSE CHAVARCODE,PARIPALLY,
P.O.KOLLAM.

12. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA.

BY ADV. SMT.DAISY THAMPI-R1 TO R11.
PUBLIC PROSECUTOR SRI. P.RAVINDRA BABU-R12

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD
ON 01/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 127 OF 2007

Dated this the 1st day of March, 2007

O R D E R

This is a petition for special leave to appeal against the judgment in C.C.No.19 of 1998 on the file of the Munsiff-Magistrate's Court, Paravur.

2. The above Calendar Case was taken on file on the basis of a complaint filed by the petitioner alleging that respondents 1 to 11 committed offence punishable under Section 500 read with Section 34 I.P.C. The court below took cognizance of the complaint and issued summons to respondents 1 to 11 and on their appearance the case was posted for evidence. Though the case was posted on various occasions, the appellant - complainant remained continuously absent. The case was finally posted to 19.4.2006 on which day also the appellant was absent. The learned Magistrate considered the application filed for excusing the absence of the petitioner, but found the same devoid of merit and hence acquitted the accused under Section 256 (1) Cr.P.C.

3. Learned counsel appearing for the petitioner submits that the

learned Magistrate ought to have given some more time to the petitioner to adduce evidence. As per Section 256(1) Cr.P.C. the Magistrate has the power to acquit the accused in the absence of the complainant. The above section was considered by this Court in the decisions reported in **Don Bosco v. Partech Computers Ltd., 2005(2) 1003** and **G.F.S. Chit & Loans(P) Ltd. v. Rajesh, 2006(3) K.L.T.825**. In the above two judgments, this Court had taken the view that it is open for the court below to acquit an accused in the absence of the complainant only if the court finds that the presence of the complainant was essential on that day for the progress of the case. The same view was taken by the Apex Court in the decision reported in **Associated Cement Co. Ltd. v. Keshvanand, 1998 (1) K.L.T. 179 (S.C.)**. Considering the principles laid down by this Court and the Apex Court in the decisions referred to above, this Court is of the view that the impugned judgment requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

